THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.21053 and 21054 of 2006

Dated:09.03.2007

Between:

Kancharla Chandra Sekhara Rao and another.

…PETITIONERS

and

Kanuru Gram Panchayat, Krishna District and others.

…RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.21053 and 21054 of 2006

COMMON ORDER:

These writ petitions are filed assailing a notice/communication dated 05.09.2006 issued by first respondent, Kanuru Gram Panchayat, to the petitioners informing them about the resolution dated 30.08.2006 passed by it stopping the works given to them earlier.

The petitioners are allegedly registered contractors to first respondent. Pursuant to the tenders invited by first respondent in March, 2006 for various works, the petitioners submitted their tenders for completion of certain road works. They allege that as their tenders were more responsive being lowest, they were awarded works and subsequently work orders were passed on 05.04.2006 in case of the petitioner in W.P.No.21054 of 2006 and on 06.06.2006 in case of the petitioner in W.P.No.21053 of 2006. They also allege that they completed major part of the works, but could not complete the works due to the elections for Zilla Parishad and Mandal Parishad Territorial Constituencies. Thereafter inguinal elections were held to first respondent in August, 2006. On 05.09.2006, the Secretary of first respondent informed about the resolution directing to stop the works on the ground that the same were not completed within the stipulated time.

These writ petitions came up for admission before this Court on

11.10.2006 and 13.10.2006. On the latter date, the matters were admitted and this Court recorded the submission/undertaking of the learned standing counsel for first respondent that the works would not be allotted to others until further orders by this Court. Thereafter, first respondent filed counter-affidavits in both the writ petitions. Respondents 3 and 4 in W.P.No.21053 of 2006 filed W.V.M.P.No.2659 of 2006 for vacating the interim orders. Two villagers filed application, being W.P.M.P.No.29617 of 2006, seeking to implead themselves as party respondents 3 and 4 in W.P.No.21054 of 2006, which was ordered by this Court on 08.11.2006, and also moved W.V.M.P.No.2658 of 2006. When the miscellaneous applications are moved before this Court, the learned counsel for the petitioners as well the learned counsel for the contesting respondents agreed for final disposal of the matters. That is how the matters are brought together today and are being disposed of by this common order.

In the counter-affidavits filed by first respondent, it is stated that the out going Sarpanch hurriedly called for tenders with a view to award works to his benami. Later works were given to the petitioners, who are not income tax assessees. Though the works were awarded, no formal agreement was entered into between first respondent and the contractors. As per the tenders, the works are to be completed within the stipulated time, however they were not completed. Further the works carried out substandard material and number of complaints were received. Therefore first respondent passed resolution No.10 dated 30.08.2006 as per G.O.Ms.No.94 dated 01.07.2003. The deponent of the counter-affidavits on behalf of first respondent also made an averment to the effect that the impugned notice/communication is in the nature of a temporary suspension of execution of the works pending enquiry by the Engineering Department and therefore, it is legally sustainable.

In the counter-affidavit filed by respondents 3 and 4 in W.P.No.21503 of 2006, the following averments were made. It is stated that they are registered contractors, who executed various works, and that pursuant to the tender notification issued by first respondent inviting tenders for various gram panchayat works, they submitted their tenders, and they were awarded work by resolution of first respondent dated 18.09.2006. It is also stated that they also entered into an agreement with first respondent on 26.09.2006 and work orders were issued to them and that they have completed more

than twelve items of work. The works awarded to the answering respondents were not questioned by the petitioner in W.P.No.21053 of 2006 and therefore, they assert that they are not proper parties. They also allege that the petitioner in W.P.No.21053 of 2006 has not even commenced the work and failed to complete the works within stipulated time.

Respondents 3 and 4 in W.P.No.21054 of 2006 also filed a counter-affidavit stating that the petitioner in W.P.No.21054 of 2006 dumped gravel on the road at or about the time of issuance of impugned notice/communication and due to these the villagers are facing lot of hardship.

The learned counsel for the petitioners submits that the impugned notice/communication was issued to the petitioners directing to stop the works only on the ground that they were not completed within the stipulated time. Now in the counter-affidavits, first respondent has set up a new case alleging that the petitioners are not income tax assessees and that no formal agreement was entered into between first respondent and the contractors, therefore, the learned counsel submits that even when there is a defect in completion of the works, the order to stop the works is arbitrary, especially when the same was not preceded by a notice. **Opposing** the writ petitions, the learned standing counsel for first respondent and the learned counsel for respondents 3 and 4 point out that in the absence of formal agreement, the petitioners cannot claim any right to complete the works, especially when they failed to complete the works within the stipulated time pursuant to the work orders given to them in April and June, 2006. They also point that there was total lack of transparency in awarding the works to the petitioners and even before the formalities are completed the petitioners commenced the works, which is illegal.

All the parties admit that first respondent issued tenders. First respondent now alleges that though the tenders were called for and the petitioners submitted tenders, they were not accepted by it and there is no such resolution as yet, which is also not denied by the petitioners. The petitioners, however, rely on the work orders issued to them by the Secretary of first respondent. Except filing the work orders, the communication from the Secretary or the resolution awarding works to them have not been placed before this Court. In the absence of these things, it is not possible for any Court to hold that there is a concluded contract between the petitioners and first respondent. Be

that as it is, ordinarily any order, which results in civil consequences, is passed without prior notice, the same is invalidated by the Court. In this case as submitted by the learned standing counsel for first respondent, the impugned notice/communication is by way of a notice pending enquiry by the Engineering Department to go into the questions of substandard materials and substandard works. In such an event, fairness and transparency adopted by first respondent has to be inferred. There is no strong reason to agree with the learned counsel for the petitioners that the petitioners were meted out with arbitrariness and irrationality. This Court, however, hastens to add that in these cases any decision or resolution of Gram Panchayat can be subject matter for a further enquiry by the Government under Section 246 of the Andhra Pradesh Panchayat Raj Act, 1994 (the Act, for brevity) which empowers Government to cancel the resolution. The District Collector can also send a report if there is illegality in any resolution passed by Gram Panchayat. In the absence of any material to show that there was concluded contract, this Court is not able to grant any relief to the petitioners, if so advised they may file a detailed representation to first respondent or seek redressal before the District Collector or Government.

It is brought to the notice of this Court hat in exercise of powers under Section 268 of the Act, the Government has promulgated the Andhra Pradesh Gram Panchayat (Invitation and acceptance of tenders for works and purchases) Rules, 2002. These Rules provide an elaborate procedure for inviting tenders, evaluation of tenders, acceptance/rejection of tenders as well as awarding of works. As and when petitioners approach the District Collector or Government, their grievance has to be examined in the light of these Rules.

The writ petitions, with the above observations, are accordingly dismissed and the interim orders passed on 13.10.2006 are vacated. No costs.

(V.V.S.RAO, J)

09th March, 2007
ghn